

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Donovan	Team: Team # 6	CCRB Case #: 200610155	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/02/2006 4:30 PM	Location of Incident: 63rd Road and Yellowstone Boulevard	Precinct: 112	18 Mo. SOL 2/2/2008	EO SOL 2/2/2008	
Date/Time CV Reported Wed, 08/02/2006 8:40 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 08/02/2006 8:40 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Neil Zuber	22027	931483	112 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Neil Zuber	Abuse: PO Neil Zuber stopped the car in which § 87(2)(b) was an occupant.	
B.POM Neil Zuber	Off. Language: PO Neil Zuber made remarks to § 87(2)(b) based upon ethnicity.	
C.POM Neil Zuber	Force: PO Neil Zuber pointed his gun at § 87(2)(b)	
D.POM Neil Zuber	Discourtesy: PO Neil Zuber spoke rudely to § 87(2)(b)	
E.POM Neil Zuber	Force: PO Neil Zuber used force against § 87(2)(b)	
F.POM Neil Zuber	Abuse: PO Neil Zuber threatened § 87(2)(b) with the use of force.	
G.POM Neil Zuber	Abuse: PO Neil Zuber threatened to issue a summons to § 87(2)(b)	

Synopsis

On August 2, 2006, Officer Neil Zuber stopped § 87(2)(b)'s vehicle on 63rd Road and Yellowstone Boulevard in Queens, NY. Officer Zuber allegedly stopped § 87(2)(b)'s car because she did not wear a seat belt (Allegation A). Officer Zuber asked § 87(2)(b) for her license and registration, which she did not have on her person. § 87(2)(b) alleged that Officer Zuber asked where she was from because of her accent and § 87(2)(b) explained that she was from Uzbekistan. Officer Zuber allegedly said, "You Russian Jews, why do you give us so many problems in our country?" (Allegation B). § 87(2)(b) was scared of Officer Zuber and left the scene. She drove for about one and a half blocks until she stopped her car. Officer Zuber and § 87(2)(b) both got out of their vehicles and Officer Zuber pointed his gun at § 87(2)(b) (Allegation C). § 87(2)(b) alleged that Officer Zuber sang a song to her about "fucking bitch" and used the words "bitch" and "fuck" several times during the incident (Allegation D). Officer Zuber placed § 87(2)(b) into a RMP and allegedly put the heat on with the windows closed (Allegation E). § 87(2)(b) alleged that Officer Zuber said, "I want you to die. I want you to die. Die. Die." (Allegation F). Officer Zuber issued § 87(2)(b) eight summonses and threatened to issue her a summons the next time he sees her (Allegation G).

§ 87(2)(g)

This case was originally assigned to Investigator Jason Saturnin and was reassigned to Investigator Erin Donovan following his departure from the agency.

Summary of Complaint

On August 2, 2006, § 87(2)(b) filed a complaint with the CCRB via the call processing system (Enc. 5A-B). The investigator spoke to § 87(2)(b) on the phone on August 11, 2006 and received a detailed phone statement (Enc. 6A-B). § 87(2)(b) was interviewed at the CCRB on August 17, 2006 (Enc. 7A-H). She provided a sketch of the scene of the incident. The sketch accompanies her statement. § 87(2)(b)'s statements were consistent. Her statement is summarized as follows:

§ 87(2)(b) stated that on August 2, 2006 at approximately 4:30 PM on 99th Street in Queens, she was on her way to Queens College to pick up her son, § 87(2)(b). She asked her § 87(2)(b)-old nephew, § 87(2)(b) to go with her. They entered her car (1995 dark blue 4-door Town Car) and pulled out of her garage, located on 99th Street. § 87(2)(b) was seated in the front passenger seat. After pulling out of the garage, her nephew told her to put on her seatbelt. The garage is located next to a streetlight, which was red, and she put on her seat belt at the light. On 63rd Road (the one-way street she faced while waiting for the light), there was a marked patrol car parked by a double-parked truck. Initially, § 87(2)(b) did not see the patrol car until she made the turn onto 63rd Road; she already had her seat belt on. PO Neil Zuber (6'0", skinny, white, blue or gray eyes, Irish, short white hair, 26-29 years old) was identified by § 87(2)(b)'s lawyer, § 87(2)(b), by calling the police department uniformed personnel and giving them the tax number listed on the summonses. PO Zuber had his head down and was writing something. After she completed the turn, PO Zuber followed § 87(2)(b) and then stopped her.

PO Zuber's patrol car was parked behind § 87(2)(b)'s car. He exited his patrol car and approached § 87(2)(b). PO Zuber asked her for her license and registration. She told him that she forgot them at home in her rush to pick up her son. She then asked PO Zuber what was wrong. PO Zuber said, "Seat belt. You put your seat belt on when you saw me." § 87(2)(b) told PO Zuber that she had a doctor's note excusing her from wearing a seat belt because she had a herniated disc in her neck. PO Zuber asked why did she put the seat belt on. § 87(2)(b) told PO Zuber that she lived close by and asked if they could go back together

and she would give him her license. PO Zuber said that he should put her in handcuffs. PO Zuber asked her for her name and she told him. He then asked her where she was from because of her accent. She said Russia and then specified Uzbekistan. PO Zuber said, "Oh, you're a Russian Jew." § 87(2)(b) said, "so." PO Zuber said, "You Russian Jews, why do you always give us so many problems in our country." She looked at him, shocked. PO Zuber started to walk back to his vehicle. She believed that PO Zuber was going to get his handcuffs, and was afraid. She turned on her ignition and left the scene. She drove approximately one and a half blocks and then stopped on the corner of 63rd Road and Yellowstone Boulevard. PO Zuber, with his sirens on, drove past her and stopped in front of her car.

PO Zuber exited his vehicle, drew his gun (small and black; not a revolver) and pointed it at § 87(2)(b). He approached § 87(2)(b) and screamed at her to get out of her car. She exited her vehicle and stood next to it saying, "You want to kill me? So kill me. What did I do?" While pointing the gun with his left hand, PO Zuber used his right hand to take out his handcuffs. He told her to place her hands behind her back and, he placed her in handcuffs.

PO Zuber spoke into his radio and three police cars carrying six officers responded. A uniformed female officer, later identified as PO Brandi McLoughlin was among the respondents. PO Zuber instructed PO McLoughlin to watch § 87(2)(b) while PO Zuber spoke to other police officers. PO McLoughlin passed her hands along § 87(2)(b)'s torso, shoulders, and waist areas. § 87(2)(b) asked PO McLoughlin what was going to happen and if she could let her go. PO McLoughlin told § 87(2)(b) repeatedly to "shut up" and kept pushing her against her car. PO McLoughlin pushed § 87(2)(b)'s head down and placed her into the rear passenger side of the patrol car. PO Zuber entered the driver's seat of the patrol car while PO McLoughlin sat in the passenger's seat.

PO Zuber told § 87(2)(b) that if she says that he discriminated against her, he would take her to jail. She then asked him, "Why did you say I was a Jew and curse at her?" PO Zuber said, "Oh, I curse you? Oh really? Fucking, fucking, fucking, fuck, fucking, bitch, bitch, fuck, fucking, fuck [...]." She said that he started to sing a song about "fucking bitch." She asked PO Zuber why he was doing this and then asked to be let go. During the interaction, PO Zuber kept telling § 87(2)(b) to "shut up bitch." He also added that she better not drive in that neighborhood and that if she did, she would get summonses everyday. He also kept saying that she was better off in Uzbekistan.

PO Zuber said that if she spoke one more time he would close the partition, which he did. § 87(2)(b) could not breathe. She stated that she opened her eyes widely and then tried to open the door to the patrol car with her cuffed hands. She leaned to the side and managed to get the door open a little bit. PO McLoughlin exited the patrol car and closed the door. PO Zuber, referring to the climate control switches under the dashboard, asked § 87(2)(b) what the red color meant. He said it meant that he was going to turn up the heat. PO Zuber turned up the heat, rolled up the windows. § 87(2)(b) said that she could die and asked the officers not to do that. She added that she was depressed, lost her job, and was afraid to be alone. She asked him not to close the windows. § 87(2)(b) said that she could die. PO Zuber said, "I want you to die. I want you to die. Die, die." PO Zuber and PO McLoughlin exited the patrol car.

PO Zuber asked PO2 and PO3 for ideas of what to issue summonses for. PO2 and PO3 did not reply with any ideas. PO Zuber ended up writing four yellow and four red summonses. PO2 came back to the patrol car and released § 87(2)(b). § 87(2)(b) stated that during the entire incident, she was polite to the officers. § 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b) and gave a statement to the nurse at the hospital that was consistent with her other statements. § 87(2)(b) went to the hospital after the incident voluntarily.

Results of Investigation

Civilian Witness Statement: § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on August 17, 2007 (Enc. 8A-F). His statement was consistent with his aunt's statement, § 87(2)(b) is § 87(2)(b) old and was the passenger in § 87(2)(b)'s vehicle. His statement is summarized as follows:

§ 87(2)(b) stated that on August 2, 2006 at approximately 4:30 PM on 99th Street in Queens, he and his aunt, § 87(2)(b) were on their way to Queens College to pick up his cousin, § 87(2)(b). They entered her car (1993 4-door blue Lincoln) and pulled out of her garage, located on 99th Street. § 87(2)(b) was seated in the front passenger seat. An officer, PO Neil Zuber, was sitting in his marked patrol car, which was double-parked immediately after the light. After she completed the turn, she drove the distance of a block, and PO Zuber stopped her at the corner by turning on his siren. § 87(2)(b) came to a stop on the street that intersects 63rd Road.

PO Zuber asked her for her license and registration. She told him that she forgot her bag and then she searched the glove compartment for the vehicle's registration. PO Zuber asked why she was not wearing her seat belt. She replied that she was wearing it. She stated that her nephew just told her to put it on. § 87(2)(b) then tried to show PO Zuber a note from her doctor that stated she was permitted not to wear a seatbelt because they hurt her neck. She had retrieved the note from her glove compartment. PO Zuber asked where § 87(2)(b) was from, and she replied that she was from Uzbekistan. PO Zuber said, "Oh you're a Russian Jew. You give us so many problems in this world. Why don't you go back to Uzbekistan." PO Zuber started to walk back to his car for what § 87(2)(b) believed to be a name check on his aunt, but his aunt got scared that she was going to get handcuffed and drove one block to 63rd and Yellowstone. They stopped at a red light, and the police car drifted to a stop in front of § 87(2)(b)'s car. § 87(2)(b) exited her vehicle.

PO Zuber exited his vehicle, approached § 87(2)(b) and drew his gun pointing it at her. PO Zuber stopped walking a distance approximately twelve feet away from § 87(2)(b). § 87(2)(b) put her hands up and said, "Okay, okay." PO Zuber put his gun back into its holster, took out his handcuffs, and then handcuffed her. § 87(2)(b) recalled hearing a lot of "shut ups" and "fucks" from PO Zuber. PO Zuber and PO McLoughlin took § 87(2)(b) and placed her into a patrol car. She remained there for approximately forty-five minutes.

While § 87(2)(b) was in the patrol car, § 87(2)(b) stated that he saw her panicking (rocking back and forth and moving around). He also heard her say, "I'm dying in here" and PO Zuber screaming, "die, die." § 87(2)(b) also saw § 87(2)(b) successfully open the patrol car door and then PO2 close it. PO Zuber and PO2 were standing outside of the patrol car and were never in the patrol car at the same time as § 87(2)(b). § 87(2)(b) also heard the "fuck" song and PO McLoughlin repeatedly told § 87(2)(b) to shut up.

Subject Officer Statement: Officer Neil Zuber

On January 19, 2007, PO Zuber (white, male, 6'2, 190lbs, blonde hair, blue eyes) was interviewed at the CCRB (Enc. 11A-B). His statement is summarized as follows:

On August 2, 2006, PO Zuber worked alone and his assignment was summons enforcement. PO Zuber was in uniform and assigned to RMP# 1203. PO Zuber stopped § 87(2)(b)'s vehicle on 63rd Road because he saw that she was not wearing a seatbelt. PO Zuber saw the metal buckle to the seatbelt through her window. § 87(2)(b)'s nephew, § 87(2)(b) was a passenger in the car. He was about 12 or 13 years old according to PO Zuber. § 87(2)(b) was seated in the front passenger seat and wore a seatbelt. PO Zuber approached § 87(2)(b)'s vehicle and asked her for license and registration, which she did not have. § 87(2)(b) explained that she just came from her house and used her friend's car. § 87(2)(b) did not tell PO Zuber that she had a note from her doctor that said she did not have to wear a seatbelt. PO Zuber explained NYPD procedure. He said if an individual has a note from doctor it would be dealt with at court not at the scene. PO Zuber did not ask § 87(2)(b) what country she was from nor did he ever say, "You Russian Jew, why do you always give us problems in our country?" PO Zuber walked back to his vehicle to check her information and write her a summons. § 87(2)(b) put her vehicle in drive and "fled" the scene.

PO Zuber followed § 87(2)(b)'s vehicle for one long block. She was driving at 65mph in a 35mph zone. PO Zuber was able to stop § 87(2)(b)'s vehicle again because there was a truck that blocked her car. PO Zuber exited his vehicle while § 87(2)(b) also exited her vehicle and "ran" at him. PO Zuber took out his gun and pointed it at § 87(2)(b). PO Zuber ordered § 87(2)(b) to stop and she quickly tried to approach him. PO Zuber feared for his safety and the safety of § 87(2)(b) because she was in the middle of the

traffic lane. § 87(2)(b) had her hands out and was reaching into her pocketbook. § 87(2)(b) was in arm's length with her hand out. She was placed into handcuffs. § 87(2)(b) resisted by not putting her hands behind her back. PO Zuber called for back up and PO McLoughlin, who has since resigned from the NYPD, arrived at the scene. PO Zuber waited for PO McLoughlin to arrive to put her in that RMP because PO Zuber's RMP did not have a cage. § 87(2)(b) was never left alone in the RMP, PO Zuber or PO McLoughlin was with her at all times. PO Zuber did not turn the heat on in the RMP. The air conditioner was broken in the RMP and the windows were left open for ventilation. § 87(2)(b) said repeatedly that she wanted to die and commit suicide. PO Zuber spoke to § 87(2)(b) and found out the information § 87(2)(b) provided about her name was incorrect. § 87(2)(b)'s children, who are in their 20's came to the scene and confirmed that § 87(2)(b) was depressed because she lost her job. PO Zuber decided that it would be best to not arrest § 87(2)(b) and let her children bring her to the doctor for medical treatment. PO Zuber issued § 87(2)(b) several summonses including § 87(2)(b). PO Zuber did not use profanity at any point during the incident. PO Zuber did not say, "I want you to die." PO Zuber did not recall if any other officers were involved in the incident. PO Zuber did not tell § 87(2)(b) that he would ticket her if he saw her again.

Medical Records

According to § 87(2)(b)'s medical records from § 87(2)(b) (on § 87(2)(b)), her injuries included redness to her hands and wrists. She was prescribed Motrin.

Police Department Documents

The Tour 3 roll call from the 112th Precinct (Enc. 13A) indicates that Officer Zuber and Officer McLoughlin worked together on August 2, 2006.

Criminal History of Civilian

There is no criminal history on file for § 87(2)(b).

Officer/Complainant CCRB Histories

Officer Zuber has no substantiated CCRB complaints from his 4 years of service to the NYPD (Enc. 3A). § 87(2)(b) has filed two previous complaints § 87(2)(b).

Disposition of Summonses

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Officer Identification

Officer Zuber was identified from his memo book entries, the name on the summonses, and the Tour 3 roll call. His identity was confirmed by his memory of the incident. Officer McLoughlin was identified through the Tour 3 roll call and Officer Zuber identified her during his account of the incident. Both officers fit the descriptions that § 87(2)(b) and § 87(2)(b) provided to the CCRB.

Undisputed Facts

Officer Zuber stopped § 87(2)(b)'s vehicle for not wearing a seatbelt and § 87(2)(b) left the scene. Officer Zuber stopped her vehicle again and they both exited their vehicles. Officer Zuber pointed his gun at § 87(2)(b) handcuffed her and issued her eight summonses.

Disputed Facts

§ 87(2)(g)

Credibility

§ 87(2)(g)

§ 87(2)(b) alleged that Officer Zuber locked her in a RMP and turned on the heat in August, § 87(2)(g)

§ 87(2)(b) ran from the officer, § 87(2)(g) § 87(2)(b)'s children told the officer that she was suffering from depression and were going to take her to the doctor for medical treatment. § 87(2)(g) § 87(2)(b)'s nephew, § 87(2)(b) had a similar statement as her, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) the RMP did not have air conditioning and he opened the windows for ventilation. Officer Zuber explained that § 87(2)(b) suffered from depression and was not complying with his requests. Officer Zuber admitted to pointing his gun at § 87(2)(b) § 87(2)(g)

Allegation A) Officer Neil Zuber stopped the car in which § 87(2)(b) was an occupant

According to Barry Kamins' New York Search and Seizure book, Automobile Stops 5.02 (Enc. 1A) describes that a police officer has the right to make an automobile stop if he suspects there was a violation of the Vehicle and Traffic law. § 87(2)(g)

Allegation B) PO Neil Zuber made remarks to § 87(2)(b) based upon ethnicity

Allegation D) PO Neil Zuber spoke rudely to § 87(2)(b)

§ 87(2)(g) § 87(2)(b) alleged in her statement to the CCRB that Officer Zuber used profanity and ethnic slurs while speaking to her. § 87(2)(b) alleged that Officer Zuber said, "You Russian Jews, why do you always give us problems in our country?" and used the words "fuck" and "bitch" continuously throughout the incident. She also alleged that PO Zuber sang a song about § 87(2)(b) being a "fucking bitch." § 87(2)(g)

Allegation C) PO Neil Zuber pointed his gun at § 87(2)(b)

According to Patrol Guide Procedure 203-11 Use of Force (Enc. 2A), police officers must use the minimum force necessary to overcome resistance in a situation. Officer Zuber stopped § 87(2)(b)'s vehicle for the second time because she left the scene. § 87(2)(b) exited her vehicle and Officer Zuber feared for his safety and the safety of § 87(2)(b) because she was in the middle of a traffic lane. Officer Zuber stated that § 87(2)(b) "ran" at him and he told her to stop, but she did not comply. In the PD v. Gliner case, it is stated that an officer can draw his firearm if he fears for his own personal safety. § 87(2)(g)

Allegation E) PO Neil Zuber used force against § 87(2)(b)

Allegation F) PO Neil Zuber threatened § 87(2)(b) with the use of force

Allegation G) PO Neil Zuber threatened to issue a summons to § 87(2)(b)

§ 87(2)(b) alleged that PO Zuber placed her into an RMP, turned on the heat, and rolled up all the windows. She also alleged that PO Zuber said, "I want you to die. I want you to die. Die, die." § 87(2)(g)

§ 87(2)(b) alleged that at the end of the incident Officer Zuber threatened to issue her a summons the next time he sees her. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: